UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

In the matter of

The Boeing Company,

Employer,

And **NLRB Case No. 10-RC-215878**

International Association of Machinists And Aerospace Workers, AFL-CIO,

Petitioner.

AMICUS BRIEF

ON BEHALF OF

SOUTH CAROLINA MANUFACTURERS ALLIANCE
AND
SOUTH CAROLINA CHAMBER OF COMMERCE

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INTRODUCTION

The NLRB and the IAM have long opposed Boeing South Carolina's North Charleston facility, and that opposition has been firmly grounded in South Carolina's long and proud history as a right to work state. Former NLRB General Counsel Lafe Solomon was openly hostile to Boeing's decision to locate its Dreamliner facility in largely union-free South Carolina, as opposed to placing Dreamliner production in the State of Washington, where Boeing is heavily unionized. Mr. Solomon issued an unfair labor practice complaint alleging the Company violated the Act "by deciding to transfer [from Puget Sound, Washington] a second production line to a non-union facility in South Carolina for discriminatory reasons." Had the NLRB prevailed, the effective result would have been the closing of Boeing's Charleston facility. The Complaint was withdrawn only after Boeing reached an agreement with the IAM on a new collective bargaining agreement in Washington. https://en.wikipedia.org/wiki/Lafe_Solomon.

Similarly, the IAM has attempted to apply pressure to Boeing, both directly through successive organizing attempts and indirectly through the legal system. In addition to twice petitioning to represent all P&M employees, the IAM also sued former Governor Nimrata "Nikki" Haley and Catherine Templeton, the former Director of the South Carolina Department of Labor, Licensing, and Regulation, for stating that they would keep unions out of Boeing. That case was ultimately dismissed by the Court.

The IAM's latest attempt to infiltrate Boeing has been assisted by the Director of Region 10 in the Decision and Direction of Election (hereafter "DDE") for which Boeing now seeks review. It is impossible to apply current law to the record facts and conclude a fractured unit comprising less than seven percent (7%) of Boeing's Production and Manufacturing (hereafter "P&M") workforce and composed of two job categories that perform different functions from

distinct departments under separate supervision is appropriate. Yet that is precisely what the Regional Director has done. The DDE is arbitrary and designed to justify a foregone conclusion, rather than rely upon existing law[1] and the facts presented to reach a justifiable conclusion. The wholly unsupported conclusion that a fractured unit is appropriate ignores many facts, as well as existing precedent. The DDE is clearly erroneous and an abuse of discretion, and should therefore be reviewed and reversed.

ARGUMENT

I. THE REGIONAL DIRECTOR MISAPPLIED *PCC STRUCTURALS* TO ARRIVE AT EXACTLY THE TYPE OF CONCLUSION THE BOARD SOUGHT TO PROHIBIT

A. The Appropriate Standard

In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017) (hereinafter *PCC Structurals*), the Board clarified the correct standard for determining whether a proposed bargaining unit is an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees. In so doing, the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011).. *PCC Structurals*, 365 NLRB slip op. at 1.

The Board's clarified standard in *PCC Structurals* rests upon three related pillars. First, the Board stressed that the Act requires the Board to make an individual unit determination in each case "…to insure to employees the *full benefit* of their right to self-organization, and to collective bargaining, and otherwise to effectuate the policies of the Act." *Id.* at 4 and n. 14 (emphasis original, citation omitted).

[1] The Regional Director makes a perfunctory reference to *PCC Structurals, Inc*., but altogether ignores its teaching.

Second, to ensure that the statutory mandate is satisfied, the Board observed that it has almost always examined the following factors to determine whether a petitioned-for group shares a community of interest sufficiently distinct from the interests of excluded employees to warrant that a proposed group constitutes a separate appropriate unit:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including an inquiry into the amount and type of overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. at 5 (citing *United Operations,* 338 NLRB 123 (2002) and *Wheeling Island Gaming, Inc.*, 355 NLRB 637 (2010)).

Third, the Board stressed that a proper analysis must include consideration of *all* employees, including those outside the petitioned-for bargaining unit. *Id.* at 6. Indeed, the Board concluded that a fundamental flaw with the *Specialty Healthcare* analysis was that it did not require or permit consideration of all employees. *Id.* at 6-8. Instead, the Board embraced the analysis of the Second Circuit in *Constellation Brands, U.S. Operations, Inc. v. NLRB,* 842 F.3d 784 (2d Cir. 2016). The Second Circuit stated that even under *Specialty Healthcare* the Board is required as an initial matter to assess both the shared interests among employees within the proposed unit and to assess why employees outside the proposed unit "have meaningful distinct interests… that *outweigh* similarities with the included employees." *PCC Structurals, 365 NLRB slip. op.* at 9 (quoting *Constellation Brands,* 842 F.3d at 794 (emphasis in original) (other citations omitted)).

The Board concluded that it would return to its traditional community of interest test using the *United Operations* factors. Therefore, the Board must determine if petitioner has established

whether the employees within the unit the petitioner seeks share a community of interest with each other. *Id.* at 10-11. Additionally, and consistent with *Constellation Brands, supra,* the Board must also determine whether the petitioner has shown that "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." *Id.*. at 11 (quoting *Constellation Brands*, 842 F.3d at 794). Once the *Constellation Brands* test is applied, that stage of the analysis ends. Parties contending that a petitioned-for micro-unit improperly excludes employees whose interests are not sufficiently distinct from those with the proposed unit must introduce evidence to support their positions. At no point does the burden of proof shift to the employer to show that additional employees it seeks to add to the requested micro-unit share an overwhelming community of interest with employees in the petitioned-for unit. Where applicable, the analysis must consider Board-established guidelines for unit configurations in specific industries. *Id.* at 11.

B. Proper Analysis of the *United Operations* Factors Compels the Conclusion that the Production and Maintenance Unit Sought by Boeing is the Only Appropriate Unit

While the DDE purports to examine the *United Operations* factors, it failed to do so accurately.[2] It ignores completely the requirement of *PCC Structurals* to examine the interests of employees outside the unit and whether those employees "have meaningful distinct interests… that *outweigh* similarities with the included employees." *PCC Structurals*, 365 NLRB slip op. at 11. When examining factor after factor, the DDE focuses almost exclusively on a comparison of the employees within the petitioned for unit, and concludes they are sufficiently similar. What it does not do is critically examine those employees excluded from the unit to see if there is any real

[2] Boeing's Request for Review of the DDE filed on June 26, 2018 (hereinafter "Boeing's RFR") provides a detailed discussion of why the RD's analysis is not supported by the record and need not be repeated here. Boeing's RFR at 23-45. Where appropriate, Boeing's observations will be referred to in the text above.

basis for excluding them. Given this fundamental error, it is not surprising that the Regional Director felt justified in approving the fractured unit he certified for election.

At the outset of his analysis, the Regional Director observed that FRTs and FRTIs are the only employees whom Boeing internally codes as DEJ1. As noted by Boeing, however, there is no DEJ1 "department." Boeing's RFR at 25. The Regional Director observes that certain training and report documents are unique to these classifications, but he says nothing about whether and to what extent other classifications also have unique reports directed toward them. Furthermore, the Regional Director ignores how those outside the petitioned-for fractured unit have meaningful distinct interests for purposes of collective bargaining sufficient to be excluded from the unit sought by the Union.

It is obvious, even to the casual observer, that those outside the petitioned unit do, in fact, share interests sufficient to be included in the unit. For example, any negotiated rules concerning scope of work to be performed on the flight line by FRTs, FRTIs and others (*e.g.*, who can be required or allowed to perform this work, where, how and under what circumstances) necessarily impact both those included in the petitioned unit and those outside the petitioned unit because they perform the same work. The manner in which reports are made and how training is conducted impacts the entire facility, not just the two classifications from separate departments addressed by the Regional Director. All employees have a common interest for purposes of collective bargaining in how these matters are addressed between Boeing and a union. The Regional Director completely failed to address the common interests of all employees, as required by *PCC Structurals, supra.*

Similarly, with regard to skills and training, the Regional Director focused on the skill set of the FRTs and FRTIs, their level of training, and the fact they read reports directed exclusively

to them. However, even though he acknowledges that employees other than FRTs and FRTIs have the A&P license Boeing requires of these classifications and that the FRTs and FRTIs do not need the A&P license to perform their jobs, he gives these facts no real weight. DDE at 26-27; *see also* Boeing's RFR at 28. The Regional Director also overlooks a wealth of evidence demonstrating that the other production and maintenance employees share both skills and training with FRTs and FRTIs. *E.g.,* Boeing's RFR at 26-29.

When it comes to the work they are actually doing, the Regional Director cannot help but recognize that FRTs and FRTIs perform much of the same work as employees in other classifications. DDE at 28. Boeing's RFR at 29-31 confirms this and demonstrates that the work of FRTs and FRTIs shares a high degree of functional integration with those outside of the fractured unit found appropriate by the Regional Director. The Regional Director simply dismisses this fact without analysis by claiming it is not the majority of their work. DDE at 28. The fact that shared work may not constitute a majority of the unit work is not determinative. *See, e.g., Virginia. Mfg. Co.*, 311 NLRB 992, 993 (1993). Moreover, focusing on the work performed by those within a petitioned unit without considering the interests in that work of those outside the petitioned fractured unit is inconsistent with the analysis required by *PCC Structurals.* The Regional Director is required to consider what distinct interests those outside the unit have for purposes of collective bargaining that justify their being included or excluded from the proposed unit. This factor, viewed through the proper lens, leads to exactly the opposite conclusion from that reached by the Regional Director. Those outside the fractured unit sought do indeed have a high degree of interest for purposes of collective bargaining in how, when, where and by whom common work is done. Focusing only on the skill set and work volume of those within the petitioned-for unit as the Regional Director does is both inconsistent with precedent, and addresses

only half of the analysis required by *PCC Structurals.* Failure to complete the analysis ignores the Board's directive and leads to the wrong conclusion. *See Boeing Co.*, 337 NLRB 152, 153 (2001); *Virginia. Mfg. Co.*, 311 NLRB at 993; *PCC Structurals*, 365 NLRB slip op. at 10-11.

When examining the extent to which the petitioned employees have contact with other employees, the Regional Director again focuses primarily on circumstances related just to the FRTs and FRTIs. The Regional Director recognizes that FRTs and FRTIs work with at least 20 employees outside of those classifications, attend plant-wide meetings and events, and have access to all the amenities offered to other employees, whether they choose to use them regularly or not. DDE at 28-29. There is no recognition, however, that FRTs and FRTIs are a part of an integrated manufacturing process who interact regularly with a wide variety of other employees outside the petitioned unit who are a part of that same integrated manufacturing process. *See, e.g., TDK Ferrites Corp.*, 342 NLRB 1006 (2004) (concluding that production and maintenance are highly integrated); *Clinton Corn Processing Co.*, 251 NLRB 954, 955 (1980) (concluding that corn syrup operation highly integrated with manufacturing process); *Virginia. Mfg. Co.*, 311 NLRB at 993 (holding that employee who had regular contact with other employees, identical benefits, and job duties functionally integrated should have been included). There is no evaluation of what distinct interests related to collective bargaining are possessed by even one of the 2,680 employees outside the petitioned unit to justify their exclusion.

The Regional Director's discussion of the terms and conditions of employment demonstrates clearly that the unit analysis being employed is result oriented and cannot be squared with the requirements of *PCC Structurals.* First, the Regional Director says that "most strikingly" FRTs and FRTIs earn about 32% more than other employees, which, "in effect," means that they have "different" overtime, retirement and insurance benefits than other employees. DDE at 29.

This is not only wrong as a matter of fact, *see* Boeing's Request for Review at 40-43, and inconsistent with Board precedent, *Virginia. Mfg. Co., supra,* but it illustrates the fundamental flaw in the Regional Director's analysis. The issue for collective bargaining is not how a specific pay rate might impact the application of benefit plans applicable to all employees. It is the substance and contents of the plans and policies as applied to all employees that matter for purposes of collective bargaining. *E.g., Id.; Wal-Mart Stores, Inc*., 328 NLRB 904, 908 (1999) (concluding that higher rates of pay do not justify exclusion of lower paid employees); *United Rentals, Inc.,* 341 NLRB 540 (2004) (excluding lower wage employees from unit is improper). The Regional Director does not dispute that the plans and polices to which the pay rates are applied are the same for FRTs and FRTIs as they are for all other hourly employees. Boeing's RFR at 43. The interests of employees outside the unit sought by the Union for purposes of collective bargaining are identical to those inside the unit – *i.e.*, what terms, features, costs, and other options are contained within the plans and policies applicable to all employees. *See, e.g., Virginia. Mfg. Co., supra.*

The Regional Director's analysis begins with "The FRTs and FRTIs report to first line supervisors who do not supervise any other production and maintenance employees *except* for 10 employees on the cabin system team." DDE at 31 (emphasis added). Thus, the Regional Director recognizes that supervisors of unit employees also supervise non-unit employees, but he makes no effort to explain what differences for purposes of collective bargaining these or any other employees have that require their exclusion from the unit, despite the interaction among the groups and the common supervision. The Regional Director also disregards the fact that FRTs and FRTIs do not even share common supervision between themselves. Boeing RFR at 44. This fact weighs heavily against including FRTs and FRTIs in the same unit while excluding others with common

supervision. *Buckhorn Inc.*, 343 NLRB 201, 210 (2004). The Regional Director's analysis is, at best, incomplete and, at worst, incorrect. *PCC Structurals, supra.*

The Regional Director all but concludes that functional integration favors the unit sought by Boeing because Boeing operates an integrated manufacturing process, but then tries to minimize this fact by focusing on the functional integration within the fractured unit sought by the Union and the placement of the unit's job functions at the end of the production process. DDE at 30-31. By contrast, Boeing makes it clear that the FRTs and FRTIs are a part of a manufacturing process, which is integrated from start to finish. Boeing RFR at 32-33. *PCC Structurals*, of course, requires the Regional Director to consider the interests of those outside the requested unit and then explain why those outside the petitioned unit sought by the Union have a sufficient disparity of interest for purposes of collective bargaining to justify their exclusion. The Regional Director fails to properly apply the analysis required by *PCC Structurals* to this factor, as well. Finally, the Regional Director recognizes that interchange also appears to weigh in favor of a broader unit because Boeing has transferred FRTs and FRTIs to work in other departments to perform other work. DDE at 32-33. But rather than reach this logical conclusion, the Regional Director contends that this factor is at best neutral because it is the advanced skill set and certification that allows transfers to other areas, transfers are of short duration, and there is no evidence of transfer into FRTs and FRTIs by other employees. The fact that FRTs and FRTIs perform jobs outside the unit establishes that employees outside the unit do have common interests for collective bargaining purposes as to whether, when, how, and under what circumstances the FRTs and FRTIs perform the work of others outside the fractured unit sought by the Union. The Regional Director's decision is devoid of any discussion addressing disparity of interests, much less how any disparity

precludes inclusion in the unit. This factor, too, as demonstrated by Boeing, favors the production and maintenance unit sought by Boeing. *See* Boeing RFR at 35-38.

C. Summary

In the final analysis, the Regional Director failed to use the standard required by the Board in *PCC Structurals*. Specifically, the Regional Director completely ignored whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." *PCC Structurals*, 365 NLRB slip op. at 11 (quoting *Constellation Brands*, 842 F.3d at 794). This is true with respect to every *United Operations* factor. By ignoring this indispensable element of the *PCC Structurals* analysis, and focusing instead only on perceived similarities within the fractured unit sought by the Union, the Regional Director has, in effect, relied upon the overruled *Specialty Healthcare* decision, except that, in this case, Boeing was not even allowed to show that those outside the Union's proposed micro-unit share an overwhelming community of interest with those in the unit sought by the Union.

It is essential that the Board grant Boeing's Request for Review so that it can remedy the errors of the Regional Director's decision. In so doing, the Board should make clear that the *PCC Structurals* analysis requires a review of the extent to which bargaining with a smaller group might have an impact on employer policies, practices and compensation elements that are applicable to a broader group. To the extent that collective bargaining may impact how employer polices affect a broader unit, then this should be considered a factor in determining whether a full production and maintenance unit is the only appropriate unit. This is particularly true when issues arise affecting work assignments, work rules, layoffs, and compensation packages of those both inside and outside the petitioned unit.

II. THE BOARD SHOULD TAKE THIS OPPORTUNITY TO OFFER GUIDANCE ON THE APPLICATION OF THE TRADITIONAL COMMUNITY OF INTEREST STANDARD

The DDE for which Boeing seeks review represents more than just a misapplication of the community of interest factors to which the Board returned in *PCC Structurals*. Rather, it is another example of the refusal of Regional Directors to abandon the deferential analysis applied in *Specialty Healthcare*, even in the face of the Board's clear instruction to do so. As Member Johnson remarked in his dissent in *DPI Secuprint*, "[t]he decision here reads like a doctrinal obstacle course where the overwhelmingly shared interests connecting the petitioned-for and excluded employees are factors to be explained away in a post-hoc justification of that result, a justification so strained that it is difficult to track the actual rationale being applied here." *DPI Secuprint, Inc.*, 362 NLRB 172 (2015). Beyond the obvious factual and legal errors running through the Regional Director's analysis, the DDE begs for correction, explanation, and guidance from the Board to the Regions to lessen the threat of a proliferation of fractured units being certified and undermining the policies and purpose of the Act.

A. The Regional Director's Analysis Ignores the Section 7 Rights of the Excluded Employees and Violates Section 9(c)(5)

In *PCC Structurals*, the Board emphasized its role in making bargaining unit determinations is "to assure to employees the *fullest freedom* in exercising the rights guaranteed by [the] Act." 365 NLRB 160 (quoting NLRA Sec. 9(b)) (emphasis in original). The Board made clear that this duty must be discharged within the context of the NLRA as a whole, which emphasizes that employees have the right to engage in the protected activities outlined in Section 7 of the Act or to refrain from any or all such activities. *Id*. at 4. The Board also noted Section 9(c)(5) of the Act, which dictates that "[i]n determining whether a unit is appropriate . . . *the extent to which the employees have organized shall not be controlling." Id.*

Unfortunately, the DDE in this case loses sight of this guidance from the Board. While the Regional Director ostensibly performed the community of interest analysis required by *PCC Structurals*, he did so in an almost entirely inward looking fashion. As has been shown elsewhere in this brief and in Boeing's Request for Review, even when applying the *United Operations* factors, the Regional Director focuses almost exclusively on what the members of the proposed unit have in common, and largely ignores the many factors they have in common with excluded employees. Driven by a desire to validate the Section 7 rights of the 176 employees in the petitioned-for unit, the Regional Director completely ignored the previously stated will of 2,097 Boeing employees who had, just a year earlier, voted not to be represented by the IAM. As Boeing has clearly shown in its Request for Review, those excluded employees share a significant community of interest with the FRTs and FRTIs in the certified unit.

Boeing rightfully took exception to the Regional Director's finding of a community of interest among the FRTs and FRTIs. But, even assuming a community of interest among those employees, the Regional Director was required to proceed to the critical question of "whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit." *Wheeling Island Gaming, Inc.*, 355 NLRB 637 (2010) (emphasis in original); *See also, Nestle Dreyer's Ice Cream Co. v. NLRB*, 821 F.3d 489, 495 (4th Cir. 2016) ("The test ensures not only that the employees in the unit share common interests, but also that these interests are distinct from those of excluded employees."). This discussion is sorely lacking in the DDE, and its absence is fatal to the analysis. As the Board has noted, the purpose of this analysis is to "ensure[] that the Section 7 rights of excluded employees who share a substantial (but less than 'overwhelming') community of interests with the sought-after group are taken into consideration." *PCC Structurals*, *supra*.

By focusing on what makes FRTs and FRTIs similar only to each other, rather than inquiring into whether there are many others who share those similarities, the Regional Director has allowed the extent to which the employees have organized to control the determination of whether the unit is appropriate. While giving lip service to *PCC Structurals*, the Regional Director has, in fact, essentially deferred to the unit selected by the Union, in the manner dictated by *Specialty Healthcare*. This is precisely the kind of abdication of discretion the Board condemned in *PCC Structurals*, and which is prohibited by the Act. *See* 29 U.S.C. §159(c)(5). As Boeing has keenly pointed out, unions seek micro unit representation only when they know they do not have the support of the wider population in a workforce. Such a strategy is particularly transparent where, as here, the Union in question sought to represent a fractured unit of less than 200 employees only after it failed twice to organize a wall-to-wall unit of almost 3,000 employees. It appears even more cynical when the same union represents wall-to-wall bargaining units in every other Boeing facility in which it is present.

The DDE puts 93% of Boeing's production and maintenance workforce on the outside looking in. If allowed to stand, this decision will leave more than two thousand employees with no voice in negotiating terms and conditions of employment that will no doubt impact them. Indeed, it will take away even their ability to determine who will negotiate over those terms. This is particularly troubling in this situation, where those employees have already overwhelmingly indicated they did not want this very union negotiating on their behalf. Any unit determination should be grounded in the purpose for which units are selected, which is collective bargaining. The Regional Director, however, disregarded the many topics on which the FRTs and FRTIs would be bargaining that apply equally to all of the other P&M employees – topics like wages, benefit plans, mandatory overtime, work assignments, and transfers within the facility. There was no clear

finding of how or why the bargaining interests of FRTs and FRTIs are sufficiently distinct from those of the other P&M employees to warrant creation of a separate bargaining unit. Rather, when he did compare FRTs and FRTIs to other P&M employees, the Regional Director focused on such meaningless distinctions as their code in the human resource management system or specialized tools that a limited number of FRTIs might use in their jobs. As has been previously shown, and as Boeing illustrated in detail in its Request for Review, these meager differences are dwarfed by the many similarities all of these employees share that would be mandatory subjects of collective bargaining, were it to occur.

B. The Regional Director's Analysis Threatens Labor Stability and the Free Flow of Commerce in South Carolina

The analysis used in the DDE also undercuts one of the primary policies of the NLRA: the promotion of labor peace and stability, so as to encourage the free flow of commerce. *See* 29 U.S.C. § 151 ("It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining"). Keeping alive the spirit, if not the precise language of *Specialty Healthcare*, as the Regional Director has done here, necessarily encourages the Balkanization of the workplace. The Regional Director makes much of the fact that FRTs and FRTIs are the only employees coded in Boeing's HRMS as "DEJ1," as though that somehow indicates that they are a separate and distinct group of workers. The chart set forth in the DDE to make this point, however, shows that Boeing has no less than eleven job codes.

Although Boeing has indicated that these job codes have little to do with the departmental organization of the facility (RFR at 16), the analysis applied by the Regional Director leaves open

the possibility that each of these twelve job codes could be considered a separate bargaining unit.[3] At a minimum, the kind of superficial, inward-looking analysis utilized in the DDE could lead to multiple bargaining units at this one facility. Consequently, Boeing's bargaining obligation could be fractured among various groups that do not necessarily bear any relation to how the facility actually functions. It is, at the least, without question that the immediate impact of the DDE would bestow outsized bargaining power upon a small group of employees who represent less than 7% of the workforce, and disenfranchise the vast majority of employees. This is particularly true where these employees work at the last step of an integrated production process.

Additionally, this type of Balkanization could ultimately lead to competing bargaining demands or contractual obligations from and to different groups of employees represented by different unions. Such a state of affairs could lead to a workplace in which Boeing is constantly in negotiation with one group or another, and therefore always under the threat of a work stoppage by a small group of employees that would have an inordinate impact on operations. Even if no work stoppages occurred, competing bargaining units would jealously guard their own work jurisdiction, leading to decreased opportunities for cross-training and skill development and a corresponding lack of flexibility in the production process and ability to meet customer demand.

This threat to labor stability caused by these factors would have both immediate and long-term deleterious impact on the economy of South Carolina. *Amici*, the South Carolina Chamber of Commerce and the South Carolina Manufacturers Alliance, count among their member investors dozens of companies that are vendors or suppliers of Boeing. Any work stoppage or slowdown would have an immediate impact on them. If bargaining units of the relative size certified by this DDE were allowed to propagate among the hundreds of integrated manufacturing

[3] One of the thirteen job codes listed in the chart set out in the DDE consists of a single employee, which obviously could not be certified as a separate bargaining unit.

facilities across the state, South Carolina's roughly 245,000 manufacturing jobs could be held hostage at any given time by as few as 17,000 employees spread across the State. Importantly, plant closures and job losses would predictably occur.[4] Such a state of affairs is directly at odds with the purposes of the NLRA and contrary to the policies championed by this Board in *PCC Structurals*.

If this DDE is allowed to stand, any union seeking an election in this Region could argue that virtually any classification or combination of unrelated classifications in any otherwise integrated manufacturing process in South Carolina is an appropriate bargaining unit, provided the petitioner could point to some difference between the petitioned-for classification and the rest of the employees. At the same time, no employer would be accorded even the limited opportunity to rebut a request for a micro-unit provided by the overruled *Specialty Healthcare* decision. This is exactly the result *PCC Structurals* seeks to preclude. The RD's Decision contradicts *PCC Structurals*, the language of the Act, and long-standing precedent, which establishes that integrated manufacturing processes, both at Boeing and, in general, are presumed appropriate.

Moreover, allowing this Regional Director to ignore Board law in this Region, while requiring RDs in other Regions to apply the correct standard, would place every South Carolina employer subject to the Board's jurisdiction at an intolerable competitive disadvantage. South Carolina and the rest of Region 10 would be the only place in the country that allowed micro-units of the type condoned in *Specialty Healthcare* and fragmented units of the type that not even *Specialty Healthcare* would permit. *See, e.g., Bergdorf Goodman*, 361 NLRB 50 (2014).

[4] As Chairman Ring noted, "the Board should consider how its activity affects jobs and better balances competing interests among workers, unions and businesses." Chris Opfer, *Has Labor Board 'Protected Workers Right Out of a Job'?* Labor and Employment on Bloomberg Law, https://www.bna.com/labor-board-protected-n73014476280/ (last visited July 18, 2018).

The IAM has already attempted to circumvent South Carolina's long and successful history of worker freedom by suing the former Governor and Director of the Department of Labor, Licensing and Regulation for standing by the State's commitment to allowing employers and employees to deal directly with one another. That lawsuit was dismissed by the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit. *International Ass'n of Machinists and Aerospace Workers v. Nimrata Haley*, 482 F. App'x 759 (4th Cir. 2012) (unpublished) It would be a shame to allow the IAM to accomplish through targeted, fractured unit organizing what it has been previously unable to accomplish by wider, proper unionizing attempts and intimidation through the legal system.

III. CONCLUSION

For all of the reasons set forth herein, along with the numerous reasons raised in Boeing's Request for Review, the unit certified by the Regional Director should be declared inappropriate and the Board should hold that the only appropriate bargaining unit in this case is a wall-to-wall unit of all production and maintenance employees, as requested by Boeing.

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Respectfully submitted this 18th day of July, 2018.

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CERTIFICATE OF SERVICE

I certify that the foregoing **Amicus Brief on behalf of South Carolina Manufacturers Alliance and South Carolina Chamber of Commerce** was electronically filed with the Board through the Board's website and was served electronically on:

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This the 18th day of July, 2018.

s/Mark M. Stubley
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